

STATE OF MICHIGAN
COURT OF APPEALS

In re M. Smith, Minor.

UNPUBLISHED
December 16, 2014

No. 322683
Kent Circuit Court
Family Division
LC No. 14-051225-NA

Before: DONOFRIO, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court’s order terminating her parental rights to the minor child under MCL 712A.19b(3)(i) (parental rights to one or more siblings terminated due to serious and chronic neglect or physical or sexual abuse and prior attempts to rehabilitate the parent were unsuccessful) and (j) (reasonable likelihood that the child will be harmed if returned to the parent). Because the trial court provided the statutory basis for acquiring jurisdiction over the minor child, we affirm.

Respondent’s sole argument on appeal is that the trial court was without jurisdiction to terminate her parental rights at the initial disposition because it failed to specifically articulate which of several alternative statutory bases for jurisdiction alleged in the petition were proven by a preponderance of the evidence at the adjudication phase of the proceedings.

“In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase.” *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). “Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase.” *Id.* Jurisdiction is established pursuant to MCL 712A.2(b), *id.*, and relevant to the instant case, the statute provides that a trial court has jurisdiction in proceedings concerning a child under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . . [or]

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Respondent correctly notes that, during the adjudication trial, the trial court failed to specifically state on the record the particular statutory ground under which it exercised jurisdiction over the child. Instead, it merely acknowledged on the record that “one or more grounds for the assumption of jurisdiction over the child pursuant to [MCL] 712A.2b have been established.”

Respondent’s reliance on *In re Nelson*, 190 Mich App 237; 475 NW2d 448 (1990), is misplaced. In *In re Nelson*, the Court held that the trial court was without jurisdiction to terminate the respondent’s parental rights because it “failed to make findings of fact or explain its basis for assuming jurisdiction” at the hearing or in its accompanying order *and* because an independent review of the evidence by this Court revealed that neither of the statutory grounds for jurisdiction alleged in the petition had been proven by a preponderance of the evidence. *Id.* at 240-241. Implicit in the Court’s finding is that, had an independent review of the evidence supported the trial court’s exercise of jurisdiction under one of the statutory grounds alleged in the petition, its failure to specifically identify the statutory basis would have been harmless.

Further, in the context of a jury trial, this Court has stated that “there is no requirement that the jurors must reach consensus regarding which specific statutory grounds supported jurisdiction. Instead, . . . jurisdiction exists as long as five jurors find that petitioner proved ‘one or more of the statutory grounds’ for jurisdiction.” *In re VanDalen*, 293 Mich App 120, 134; 809 NW2d 412 (2011), quoting MCR 3.972(E). Likewise, it stands to reason that a trial court also is not required to specify which statutory ground for jurisdiction alleged in the petition was met by a preponderance of the evidence, so long as it finds that the evidence established *at least one* of those grounds. And here, the trial court eventually stated that it did find at least one ground was proven by a preponderance of the evidence.

Regardless, in its written order of adjudication, the trial court specifically indicated which statutory ground under MCL 712A.2b was proven by a preponderance of the evidence: there was “an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent, adult, or other custodian.” Even though the order did not cite the specific subsection (2) of the statute, the description utilizes the same language from that subsection. Accordingly, the trial court did articulate which statutory ground was proven by a preponderance of the evidence. This, again, is distinguishable from *In re Nelson* because, as this Court noted, the trial court in *In re Nelson* also failed to provide the basis for jurisdiction in its accompanying order. *In re Nelson*, 190 Mich App at 241. Thus, contrary to

respondent's argument, the trial court adequately specified the statutory ground for jurisdiction.

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro